IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT JACKSON
January 6, 2009 Session

STATE OF TENNESSEE v. CEDRIC JOHNSON

Direct Appeal from the Criminal Court for Shelby County
No. 08-00199 Chris Craft, Judge

No. W2008-01593-CCA-R3-CD - Filed November 30, 2009

The State appeals the Shelby County Criminal Court's dismissal of an aggravated robbery indictment against the Defendant, Cedric Johnson. The dismissal was pursuant to Rule 8(a) of the Tennessee Rules of Criminal Procedure requiring mandatory joinder. Upon our review of the record and applicable authority, we affirm the judgment of the trial court.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Criminal Court Affirmed

CAMILLE R. MCMULLEN, J., delivered the opinion of the court, in which J.C. MCLIN, J., joined. ALAN E. GLENN, J., filed a dissenting opinion.

Claiborne H. Ferguson, Memphis, Tennessee, for the Defendant-Appellee, Cedric Johnson.

Robert E. Cooper, Jr., Attorney General and Reporter; Lacy E. Wilber, Assistant Attorney General; William L. Gibbons, District Attorney General; and Nicole Germain, Assistant District Attorney General, for the Appellant, State of Tennessee.

OPINION

Facts. At the hearing on the motion to dismiss, neither party offered any evidence and relied upon their respective motions, attached exhibits, and argument. Our facts are therefore confined to those exhibits and the trial court's order. The handwritten affidavit of complaint alleging that Johnson committed the offense of false reporting, in violation of Tennessee Code Annotated section 39-16-502, provided the following:

> On 4/5/2007[,] Officer [illegible] MPD was dispatched to [Johnson's home] about an auto theft. On the scene, Mr. Johnson ask[ed] for a report on his [19]99 Chevy Cavalier that was stolen. Cedric Johnson said his car was stolen last night [at] 9:00 p.m. in Raleigh [at] his girlfriend's house. Suspect's mother (Mrs. Nelson) came to the door to ask why police were [at] her door. Suspect advised his mother his car was stolen [at] 9:00 p.m. last night. Mother did not believe her son and questioned him. Suspect told one lie after another to his mother and officer to convince them the car was stolen. Finally, suspect told his mother that he had loaned it to a friend who

> called and said there was a problem, call [and] report it stolen. Suspect admitted lieing [sic] to police and trying to get a false report. Vehicle believed to have been just used in a robbery.

Johnson was arrested for the offense of false reporting on April 5, 2007, at approximately 12:04 p.m. The affidavit of complaint and arrest warrant alleging that Johnson committed aggravated robbery, in violation of Tennessee Code Annotated section 39-13-402, was issued the next day under the same booking number and alleged the following:

> On April 4, 2007[,] at approximately 11:25 p.m.[,] two male blacks approached Di' A E. Watkins[1] at the intersection of Midland and Buntyn and robbed him at gun point taking Watkins's Nike tennis shoes, cellular telephone and $5.00. Watkins was struck in the head and kicked to the ground. On April 6, 2007[,] at approximately 12:30 P.M.[,] Watkins was shown a photographic line-up where he identified JOHNSON as one of the males responsible for robbing him of his tennis shoes, cellular telephone and $5.00. On April 6, 2007[,] JOHNSON was arrested and questioned about the listed offense. JOHNSON gave a written confession to the robbery of Watkins.

Seven hours after Johnson was arrested for the offense of false reporting, he was arrested for the aggravated robbery.

On May 22, 2007, the Shelby County General Sessions Court determined that there was probable cause to support the aggravated robbery offense, and the case was bound over to the action of the grand jury. The false offense report was scheduled for a preliminary hearing; however, a computer print-out attached to Johnson's motion to dismiss showed that the charge was dismissed for lack of prosecution. Even so, Johnson was subsequently indicted for false offense report on December 11, 2007. On January 8, 2008, Johnson pled guilty to the lesser included offense of criminal attempt-false offense report. Seven days later, Johnson was indicted for aggravated robbery. He filed a motion to dismiss claiming the indictment for aggravated robbery and the indictment for false offense report should have been consolidated and violated the rule of mandatory joinder of offenses. The trial court held a hearing on the motion, during which the trial court heard the arguments of counsel. By written order entered on June 27, 2008, the trial court granted Johnson's motion to dismiss.

ANALYSIS

The State's sole issue in this appeal is whether the trial court erred in finding that Johnson's attempt to file a false offense report was part of the same criminal episode as the aggravated robbery. It argues that the offenses were not part of the same criminal episode because they were independently motivated and were not closely connected in either time or place. In response,

[1] The victim's name in the indictment is spelled Dia Watkins.

Johnson argues that the trial court correctly ruled that the two offenses constituted a single criminal episode under Rule 8(a).

We first recognize that the findings of fact made by the trial court are binding upon this court unless evidence contained in the record preponderates against them. State v. Baird, 88 S.W.3d 617, 620 (Tenn. Crim. App. 2001). We are not bound, however, by the trial court's conclusions of law. State v. Simpson, 968 S.W.2d 776, 779 (Tenn. 1998). "The application of the law to the facts found by the trial court . . . is a question of law which this Court reviews de novo." State v. Daniel, 12 S.W.3d 420, 423 (Tenn. 2000) (citing State v. Yeargan, 958 S.W.2d 626, 629 (Tenn. 1997); Beare v. Tennessee Dept. of Revenue, 858 S.W.2d 906, 907 (Tenn. 1993)). In this case, the facts are not in dispute. The trial court's order finding that Rule 8(a) required dismissal of the indictment for aggravated robbery was based on its application of the law to the undisputed facts. Therefore, de novo review is appropriate.

This court has found no cases that define "criminal episode" for the purposes of mandatory joinder under Rule 8(a). See Baird, 88 S.W.3d at 620. In determining what constitutes a criminal episode, however, it is helpful to consider David Raybin's discussion of this term in his treatise Criminal Practice and Procedure:

> "[C]riminal episode"—relates to several distinct offenses which arise out of separate actions or conduct but which occur in a closely connected series of events in place and time. Such a concept is difficult of definition and is made more apparent by example. Thus, where a defendant successively discharges a weapon and hits different people with different bullets, the activity is a "continuous transaction." Where a defendant robs a victim, steps back and then shoots the victim, this activity is in the course of a "single criminal episode or transaction." Longer duration events may also be considered criminal episodes.

9 DAVID LOUIS RAYBIN, TENNESSEE PRACTICE SERIES CRIMINAL PRACTICE AND PROCEDURE, § 17:16 (rev. ed. 2008) (internal footnotes omitted). In addition, the Tennessee courts have repeatedly applied the following definition from the AMERICAN BAR ASSOCIATION (ABA) STANDARDS FOR CRIMINAL JUSTICE:[2]

> Single criminal episode offenses normally are generated by separate physical actions. The actions may be committed by separate defendants. In other respects, however, they are similar to same conduct offenses: they occur simultaneously or in close

[2]The ABA STANDARDS FOR CRIMINAL JUSTICE have been a guide to policymakers and practitioners in the criminal justice area for the past forty years. They have been described as "a balanced, practical work designed to walk the fine line between the protection of society and the protection of the constitutional rights of accused individuals." Martin Marcus, The Making of the ABA Criminal Justice Standards: Forty Years of Excellence, AMERICAN BAR ASSOCIATION CRIMINAL JUSTICE MAGAZINE, Vol. 23, No. 4, Winter 2009 (quoting Warren E. Burger, Introduction: The ABA Standards for Criminal Justice, 12 AM. CRIM. L. REV. 251, 252 (1974)). The Standards have also been described as "prevailing norms of practice" and "guides to determining what is reasonable." Id. (quoting Strickland v. Washington, 466 U.S. 668, 688, 104 S. Ct. 2052, 2065 (1984)).

> sequence, and they occur in the same place or in closely situated places. A critical characteristic of single episode offenses, particularly in cases involving otherwise unrelated offenses or offenders, is the fact that proof of one offense necessarily involves proof of the others.

Baird, 88 S.W.3d at 621 (quoting 2 ABA STANDARDS FOR CRIMINAL JUSTICE, § 13-1.2, Commentary (2d ed. Supp. 1986) (footnotes omitted)). A criminal episode has also been defined as "an occurrence or connected series of occurrences and developments which may be viewed as distinctive and apart although part of a larger or more comprehensive series." Baird, 88 S.W.3d at 621 (citations omitted).

This Court has often had to determine whether offenses constitute the same criminal episode. See State v. Ronnie Dale Gentry, No. E2005-01133-CCA-R3-CD, 2006 WL 891211, at *3 (Tenn. Crim. App., at Knoxville, Apr. 4, 2006) (citing Baird, 88 S.W.3d at 620-21 (concluding that a second indictment alleging gambling between January and June 1999 arose from the same "criminal episode" as the first indictment alleging gambling between August and December 1998 and that failing to bring the indictments at the same time violated the mandatory joinder rule); State v. Frazier, 683 S.W.2d 346, 350 (Tenn. Crim. App. 1984) (finding that two separately indicted offenses of presenting obscene live performances of two different dancers on one night in the same nightclub were part of the "same criminal episode"); State v. Dunning, 762 S.W.2d 142, 144 (Tenn. Crim. App. 1988) (concluding that "separate acts of selling cocaine to different officers from two distinct law enforcement investigations on different days is not a single action")).

Tennessee Rule of Criminal Procedure 8(a) regarding mandatory joinder is pertinent to our analysis and requires the following:

> Two or more offenses shall be joined in the same indictment, presentment or information, with each offense stated in a separate count, or consolidated pursuant to Rule 13 if the offenses are based upon the same conduct or arise from the same criminal episode and if such offenses are known to the appropriate prosecuting official at the time of the return of the indictment(s), presentment(s), or information(s) and if they are within the jurisdiction of a single court. A defendant shall not be subject to separate trials for multiple offenses falling within this subsection unless they are severed pursuant to Rule 14.

Tenn. R. Crim. P. 8(a).

Thus, under Rule 8(a), all crimes based upon the same conduct or arising from the same criminal episode that are not lesser included offenses must be charged in separate counts. See King v. State, 717 S.W.2d 306, 307-08 (Tenn. Crim. App. 1986), perm. to appeal denied (Tenn. Sept. 8, 1986). Failure to do so precludes the State from later retrying the defendant for crimes not charged in the original indictment. Id.; see also Ronnie Dale Gentry, 2006 WL 891211, at *5 (concluding that Rule 8(a) does not require offenses to be joined where there is no evidence that "the appropriate prosecuting official knew of all of the charges or that all of the offenses were within the jurisdiction of a single court"); State v. David Lee Kestner, No. M2004-02478-CCA-R3-CD, 2006 WL 359698,

at *5 (Tenn. Crim. App., at Nashville, Feb. 10, 2006) (concluding that the two indictments represented two independently motivated criminal episodes and were not subject to the mandatory joinder rule), perm. to appeal denied (Tenn. June 26, 2006). Regarding the policy considerations behind Rule 8(a), the Advisory Commission Comments state:

> This rule is designed to encourage the disposition in a single trial of multiple offenses arising from the same conduct and from the same criminal episode, and should therefore promote efficiency and economy. . . .
>
> The commission wishes to make clear that section (a) is meant to stop the practice by some prosecuting attorneys of "saving back" one or more charges arising from the same conduct or from the same criminal episode. Such other charges are barred from future prosecution if known to the appropriate prosecuting official at the time that the other prosecution is commenced, but deliberately not presented to a grand jury.

Tenn. R. Crim. P. 8(a), Advisory Comm'n Comment.

This court has previously held that the purpose behind Rule 8(a) "is to avoid piecemeal litigation and to disallow the 'saving back' of charges arising from the same conduct or same criminal episode." Baird, 88 S.W.3d at 621 (citing King, 717 S.W.2d at 308; 9 DAVID LOUIS RAYBIN, TENNESSEE PRACTICE SERIES CRIMINAL PRACTICE AND PROCEDURE, § 17:23 (1984)). In the 1986 King case, the defendant was indicted for assault with intent to commit murder in the first degree. The trial judge erroneously instructed the jury that malicious stabbing was a lesser included offense to assault with intent to commit murder in the first degree, and the jury convicted the defendant of malicious stabbing. On appeal, the malicious stabbing conviction was reversed and the charge was dismissed. The defendant was subsequently indicted for malicious stabbing. He filed a motion to dismiss on the basis of Rule 8(a), which was granted. On appeal, this court held that the purpose of Rule 8(a) "is to prevent a defendant from being subjected to separate trials for multiple offenses when the multiple offenses are based upon the same conduct or arise from the same criminal episode." King, 717 S.W.2d at 308. It concluded that a "second indictment after trial [on other charges based on the same conduct or arising from the same criminal episode] is prevented by Rule 8." Id.

In the Luther E. Fowler case, the State brought an additional charge against the defendant shortly after the defendant had been prosecuted for a charge arising from the same conduct that resulted in a mistrial. State v. Luther E. Fowler, No. 03C01-9207-CR-00249, 1993 WL 278468, at *1 (Tenn. Crim. App., at Knoxville, July 27, 1993). In this case, which was authored by William S. Russell, Special Judge and chair of the commission that drafted Rule 8(a) and the explanatory comment, a divided panel of this court explained its understanding of the policy behind the mandatory joinder rule:

> The King court held that, as it interpreted the [the mandatory joinder] rule, its purpose is to prevent a defendant from being subjected to separate trials for multiple

offenses when the multiple offenses are based upon the same conduct or arise from the same criminal episode.

We have no disagreement with that being held to be a purpose of the rule. Clearly, it is not the sole purpose, and is really the sanction for violation of the rule. The author of this opinion chaired the commission that drafted the rule and explanatory comment. It was clearly meant to mandate the joinder in a single indictment of all offenses known at that time to have been committed in a single criminal episode. Rule 8(a) is labeled Mandatory Joinder of Offenses, and says that such offenses shall be joined in the same indictment.

The [mandatory joinder] rule is aimed at the practice by prosecuting attorneys of "saving back" charges. This practice not only impacted upon the judicial system adversely by causing multiple trials; but it also adversely affected discovery, settlements, and other pre-trial procedures. The rule is designed for the court, the accused and both attorneys to be able to go forward with full knowledge of what the accused is to be charged with. The rule clearly provides that the accused cannot be tried on a charge that was not joined as mandated. It is a rule of repose, just as a statute of limitation is. The Advisory Commission Comment to the rule says, quite clearly, that "such other charges are barred from future prosecution." Clearly, they are meant to be.

In this case, the State chose to go to trial on the one charge of felonious assault with intent to commit first degree murder. The fact that the first trial resulted in a mistrial and would have to be held again does not change the mandatory joinder requirement, and allow a "saving back" of the charge of attempted aggravated assault.

Id. at *7. Even if a defendant has not been tried on any of the charges at the time that a later indictment is returned, the Luther E. Fowler court concluded, in contrast to King, that "[w]hether evil results flow from its breach or not, mandatory joinder of the known offenses is absolutely required and the sanction is the denial to the State of a trial upon a charge made in violation of the rule." Id. at *8.

Subsequently, in the case of State v. Carruthers, the defendant was indicted for three counts of first degree murder and later indicted for three counts of especially aggravated kidnapping and one count of especially aggravated robbery, which arose from the same criminal episode. State v. Carruthers, 35 S.W.3d 516, 572 (Tenn. 2000). The second indictment was returned prior to trial on the first indictment. Id. On appeal, the defendant claimed that the first degree murder charges should have been dismissed since the State was not forced to elect between the two indictments. Id. The Tennessee Supreme Court disagreed and adopted the holding of this court in that case:

Carruthers' argument ignores the basic premise behind the Rule. The purpose of Rule 8 is to promote efficient administration of justice and to protect the rights of the accused. The rule clearly permits a subsequently returned indictment to be joined

> with a previous indictment where the alleged offenses relate to the same criminal episode. See King v. State, 717 S.W.2d 306 (Tenn. Crim. App. 1986). This practice, however, does have certain limitations which, as the comments note, safeguard an accused against prosecutorial abuse. For example, a prosecutor cannot simply decide to "save" charges on other offenses arising out of the same conduct until after a trial is had on the original charges. Obviously, this would result in multiple trials and prejudice the defendant. This concern, however, is not present in the case at hand because the subsequent indictments were returned well before the start of trial.

Id. at 573.

More recently in State v. Frank Michael Vukelich, this court considered the different approaches to the mandatory joinder rule and concluded the following:

> We believe that Carruthers and King stand for the proposition that the purpose of Rule 8 is to prevent multiple trials necessitated by the prosecutor's "holding back" of charges arising out of the same conduct for which other charges have been prosecuted to completion. That evil is not present here, and we respectfully disagree with this Court's holding to the contrary in State v. Luther E. Fowler, 1993 WL 278468, at *6-*8. In the instant case the defendant's first trial ended with a hung jury thereby necessitating a second trial on the original charges whether the new charges were brought, or not. Following a mistrial where a new trial on the original charges will be held in any event, we do not believe Rule 8 is implicated. See, State v. Luther E. Fowler, 1993 WL 278468, at *8 (Peay, J. dissenting); People v. Quigley, 697 N.E.2d 735, 739 (Ill. 1998); (holding that mandatory joinder is not applicable in cases of mistrial).

State v. Frank Michael Vukelich, No. M1999-00618-CCA-R3-CD, 2001 WL 1044617, at *11 (Tenn. Crim. App., at Nashville, Sept. 11, 2001). Despite the inconsistent holdings regarding the mandatory joinder rule, we conclude that the Luther E. Fowler case provides the clearest guidance in applying Rule 8(a) because it provides a bright line rule for determining whether offenses based on the same conduct or arising out of the same criminal episode should be joined.

As relevant here, even when there is no unfair "saving back" of charges, the prosecutor's awareness of offenses arising from the same criminal episode can trigger the mandatory joinder rule. This court has held that "'the good faith of the Attorney General [does not] affect[] the operation of Rule 8(a).'" State v. Dominy, 67 S.W.3d 822, 825 (Tenn. Crim. App. 2001) (quoting King, 717 S.W.2d at 308) (concluding that the mandatory joinder rule was applicable even though there was no "saving back" of charges because the prosecutor knew the "salient facts" regarding the rape of a spouse offense when the indictment for aggravated rape was returned). Finally, in reviewing this issue, we are mindful that the mandatory joinder rule is designed not only to protect a defendant "from unnecessary sequential prosecutions" but also to protect an "ethical and diligent prosecutor . . . from technical, arbitrary bans to subsequent prosecution of companion offenses discovered too

late to permit consolidation." 2 ABA STANDARDS FOR CRIMINAL JUSTICE, § 13-2.3(c), Commentary (2d ed. 1980 & Supp. 1986).

In this case, after hearing arguments from counsel, the trial court issued a detailed order dismissing the aggravated robbery indictment. Within the order, the trial court addressed the three criteria for mandatory joinder under Tennessee Rule of Criminal Procedure 8(a)(1):

> (1) Criteria for Mandatory Joinder. Two or more offenses shall be joined in the same indictment, presentment, or information, with each offense stated in a separate count, or the offenses consolidated pursuant to Rule 13, if the offenses are:
>
> (A) based on the same conduct or arise from the same criminal episode;
>
> (B) within the jurisdiction of a single court; and
>
> (C) known to the appropriate prosecuting official at the time of the return of the indictment(s), presentment(s), or information(s).

Tenn. R. Crim. P. 8(a)(1). The trial court then found that the offenses of aggravated robbery and false offense report "were (B) within the jurisdiction of a single court (the Shelby County Criminal Court); and (C) known to the appropriate prosecuting official at the time of the return of the indictments (the Shelby County District Attorney) . . . ." Regarding whether the two offenses were based on the same conduct or arose from the same criminal episode, the trial court held:

> [I]t seems clear that the false report of the auto theft shortly after the commission of the aggravated robbery was part of the same criminal episode, though not the same criminal conduct. One arose out of the other. In trying the False Offense Report case, it would be prudent to introduce proof of the robbery to show motive for the false report. In trying the aggravated robbery, it would be prudent to introduce the false offense report to show guilty knowledge of the defendant. The arresting officers, and particularly the detective who took the defendant's confession, knew that the defendant had committed both offenses. These two offenses should have been consolidated in the same indictment.

In resolving this close issue, we find the case of David Lee Kestner case helpful. State v. David Lee Kestner, 2006 WL 359698, at *5. Kestner involved a police chase that occurred thirty-six hours after a murder. Id. Police officers attempted to stop the defendant's vehicle because it matched the description given in several recent burglaries. Id. The officers were not aware that the defendant was also wanted for questioning regarding a murder until after they apprehended him. Id. This court determined that the events surrounding the murder and the police chase were two distinct criminal episodes. Id. at *6. The Kestner court focused on the fact that the offenses took place within thirty-six hours and ten to fifteen miles of one another. Id. The court also stressed that the officers attempted to stop the defendant's vehicle because of his possible involvement in a burglary, not a murder. Id. Lastly, the court rejected the defendant's claim that the proof of one of the offenses "necessarily involved" proof of the other. Id. (quoting 2 ABA STANDARDS FOR CRIMINAL

JUSTICE, § 13-1.2, Commentary (2d ed. Supp. 1986)). The court acknowledged that "[o]ne can prove the defendant fled from and shot at police officers without proving the defendant broke into the victim's house and murdered him, and vice versa." Id. Ultimately, the court concluded that two indictments were not subject to the mandatory joinder rule because the offenses "were independently motivated and did not occur in a closely connected series of events in place and time." Id.

The present case is similar to the Kestner case in several ways. Both cases involve offenses that were separated by time and place. Here, the offenses were separated by twelve hours and roughly five miles.[3] Additionally, neither of the offenses necessarily involves proof of the other. Proof of the aggravated robbery would not have been necessary to show that Johnson knew that his car had not been stolen. The crime of false offense report requires proving that the defendant initiated a report to an officer about an offense which the defendant knew did not occur. See T.C.A. § 39-16-502. Johnson admitted to the officer that he was trying to file a false report. Additionally, the prosecution could have proven the aggravated robbery offense without introducing evidence of Johnson's attempt to file a false report. This case could have been prosecuted based on Johnson's written statement admitting his involvement in the aggravated robbery and the victim's identification of Johnson as the perpetrator.

The Kestner case is distinguishable, however, from this case because the offenses in this case were not "independently motivated." David Lee Kestner, 2006 WL 359698, at *6. The only reason Johnson attempted to file the false report of a stolen vehicle was to conceal his involvement in the aggravated robbery. While the facts are not fully developed on this record, in our view, Johnson's attempt to report his vehicle as stolen was in furtherance of the aggravated robbery because he attempted to deceive law enforcement and destroy or delay discovery of any evidence of the initial crime.

Unlike the defendant in Kestner, Johnson initiated contact with the police, and this contact was for the purpose of concealing his involvement in the aggravated robbery. Additionally, and most importantly, as noted by the trial court, the prosecution would have sought to introduce evidence of Johnson's attempt to file the false report in the aggravated robbery case to show "guilty knowledge" or to corroborate his involvement in the crime itself. The false offense report must be viewed as "part of a larger or more comprehensive series" aimed at achieving a particular criminal objective. See Baird, 88 S.W.3d at 621.

Before reaching our conclusion, we are compelled to note that the Commentary for ABA Standard 13-2.3(d) carved out an exception to the prohibition against successive prosecutions based on crimes arising from the same criminal episode. 2 ABA STANDARDS FOR CRIMINAL JUSTICE, § 13-2.3(d), Commentary (2d ed. 1980 & Supp. 1986). The exception excludes from the mandatory joinder rule pleas of guilty and nolo contendere to offenses based on the same conduct or arising

[3] We note that there is no proof in the record showing the actual time that Johnson called the police to his home to report that his vehicle had been stolen or the distance between where the aggravated robbery took place and Johnson's home. However, because both parties have repeatedly stated in argument before the trial court and in their respective briefs the location of both offenses and the fact that the aggravated robbery and the false offense report took place twelve hours apart, we do not view these facts as in dispute.

from the same criminal episode. This exception was designed to prevent situations, as in the present case, where a defendant "might rush to plead to minor offenses that have been filed before investigation and evaluation of greater companion offenses have been completed. Thus the standard removes any possibility that the defendant can 'sandbag' the prosecution through a quick plea." Id. Certainly, if this exception were the law in Tennessee, then we would not have the inequitable scenario now before us. We acknowledge, under this approach, our result would have been different.

However, under the existing authority and after weighing the above arguments, we conclude that the aggravated robbery and the false offense report were part of a single criminal episode. Johnson's attempt to file a false report was clearly an effort to conceal his involvement in the aggravated robbery that occurred some twelve hours earlier. Although the offenses were separated in time and place, the separation was not significant enough to overcome the obvious connection between the two offenses. We acknowledge that the two offenses do not necessarily involve proof of each other, as emphasized by the Commentary for ABA Standard § 13-1.2. See 2 ABA STANDARDS FOR CRIMINAL JUSTICE, § 13-1.2, Commentary (2d ed. 1980 & Supp. 1986). However, we believe our holding is consistent with the policy behind the mandatory joinder rule. Rule 8(a) was created in part "to avoid piecemeal litigation." Baird, 88 S.W.3d at 621 (citing King, 717 S.W.2d at 308). The failure to consolidate the two indictments amounted to piecemeal litigation because the prosecutor was aware of the aggravated robbery charge when Johnson was indicted for the false offense report charge. Accordingly, the trial court did not err in finding that the two offenses should have been consolidated pursuant to Rule 8(a).

Conclusion. Based on the foregoing, the judgment of the trial court is affirmed.

CAMILLE R. McMULLEN, JUDGE